

**BOARD OF APPEALS**  
**for**  
**MONTGOMERY COUNTY**  
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[\(www.montgomerycountymd.gov/mc/council/board.html\)](http://www.montgomerycountymd.gov/mc/council/board.html)

**Case No. S-2580**

**PETITION OF MARGARET WALKER-BRUCE**

OPINION OF THE BOARD

(Public Hearing Date: July 16, 2003)

(Effective Date of Opinion: September 12, 2003)

Case No. S-2580 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an accessory apartment.

The Board of Appeals held a public hearing on the application on July 16, 2003. Margaret Walker-Bruce appeared in support of the application. Marsha Kadesch, of the Community Based Planning Division, Maryland National Capital Park and Planning Commission (MNCPPC) testified. Cynthia Lundy, Housing Code Inspector and Robert Dejter, Housing Code Field Supervisor, Montgomery County Department of Housing and community Affairs, also testified. The Board received no testimony or correspondence in opposition to the application.

Decision of the Board:                      Special Exception **granted**, subject to  
The conditions enumerated below.

**EVIDENCE PRESENTED**

1. Margaret Walker-Bruce, owner of the subject property, seeks approval of a special exception for a proposed accessory apartment. The subject property is Lot 1, Block 88, Connecticut Avenue Estates Subdivision, 12907 Crisfield Road, Silver Spring, Maryland 20906 in the R-60 Zone.
2. The apartment has not yet been created. It is proposed to be located in the basement of the apartment and to contain one bedroom, a living room, kitchen and bathroom, and to measure approximately 503 square feet. [Exhibit Nos. 3 and 5].

3. Cynthia Lundy, DHCA inspected the subject property and submitted a report of her inspection into the record [Exhibit No. 11]. Her report notes and Ms. Lundy reiterated at the public hearing that the apartment is not yet constructed, that it will require egress windows which conform to the Housing Code, and that particular attention must be given to the ceiling height in the kitchen; which will be addressed in the building permit application process. Ms. Lundy stated that based on an estimated square footage of 503 square feet, the apartment would be suitable for occupancy by two unrelated adults or a family of two individuals.

4. Marsha Kadesch of the MNCPPC technical staff analyzed the application and recommends its approval. Staff finds that the application is consistent with the land-use objectives of the Kensington-Wheaton Master Plan. Staff finds that in the immediate surrounding area, there are no other accessory apartments, and that the proposed accessory apartment will not create an excessive concentration of similar uses or change the residential nature of the area. Staff finds that one off-street parking space is available, and that two spaces are available on the streets which abut the subject property. Staff finds that the accessory apartment will have no adverse effect on the transportation system. Staff finds that the accessory apartment will preserve the single-family appearance of the house.

5. The accessory apartment is proposed to be located in the basement of the house. It has a separate entrance. [Exhibit Nos. 3, 6 and 12].

6. The house was built in 1955. Ms. Walker-Bruce has owned the subject property since 1990, and will continue to live in the main dwelling unit [Exhibit Nos. 3 and 12].

7. The lot contains 6844 square feet. [Exhibit No. 3].

8. Ms. Walter-Bruce stated at the public hearing that she will comply with the provisions of the Housing Code, that she intends to repair the outside walkway, and that she will receive compensation for only one dwelling unit.

## **FINDINGS OF THE BOARD**

### **GENERAL STANDARDS**

*Sec. 59-G-1.2. Conditions for granting a special exception.*

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the*

*general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The physical and operational characteristics necessarily associated with an accessory apartment include: the existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; additional activity from that household, including more use of the outdoor space and more pedestrian and automobile traffic and parking activity; and the potential for additional noise from the additional household.

The accessory apartment in the instant application is subordinate to the main dwelling, has a separate entrance which maintains the single family appearance of the house, one off-street parking space, together with adequate on-street parking.

The Board finds that none of the physical or operational characteristics of the proposed accessory apartment exceed what would be expected with the use. The Board finds that there will be no non-inherent adverse effects from this proposed accessory apartment.

#### **59-G-1.21. General Conditions.**

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Accessory apartments are permitted by special exception in the R-60 Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As discussed below, the application so complies.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board adopts MNCPPC technical staff's finding that the application is consistent with the land-use objectives of the Kensington-Wheaton Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

No new structures are proposed. With a proposed square footage of 503 feet, and based upon the proposed layout, the accessory apartment will house no more than two individuals, and will generate relatively low levels of activity. One off-street space and adequate on street parking spaces are available. The single-family residential appearance of the home will be preserved. Thus, the accessory apartment will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Because of its low visual and operational impacts, the Board finds that the accessory apartment will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

No activities associated with the accessory apartment are anticipated to produce any of the listed, objectionable effects.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The Board adopts MNCPPC technical staff's finding that the proposed accessory apartment will not create an overconcentration of special exception uses and will not alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

No activity or impact of the proposed accessory apartment will have any of the listed adverse effects.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*
- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The subject property is served by adequate public facilities as determined at the time of subdivision review.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board finds, given the likely low operational impact of the apartment, and upon the adequacy of parking, that it will have no detrimental effect either on pedestrian or vehicular safety.

## SPECIFIC STANDARDS

### **Sec. 59-G-2.00. Accessory apartment.**

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

#### **(a) Dwelling unit requirements:**

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

The accessory apartment is proposed to be located in the basement of the house, and would therefore share at least one party wall in common with the main dwelling unit.

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

No addition or extension is proposed.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

The house was built in 1955 and is therefore 48 years old.

*(5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

None of these conditions exist on the subject property.

*(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

The entrance to the apartment will preserve the single family appearance of the house.

*(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

No external modifications are currently proposed.

*(8) The accessory apartment must have the same street address (house number) as the main dwelling.*

The apartment will have the same address as the house.

*(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

The apartment will be located in the basement of the house, will measure about 503 square feet, and will be subordinate to the rest of the house in size.

***(b) Ownership requirements:***

*(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Ms. Walker-Bruce resides in the main part of the house.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Ms. Walker-Bruce has owned the house since 1990.

- (3) *Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Ms. Walker-Bruce affirmed her understanding of this requirement at the public hearing.

- (4) *For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.*

As evidenced by the deed submitted as Exhibit No. 10, Ms. Walker-Bruce owns the subject property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Not applicable.

**(c) Land use requirements:**

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

The lot measures 6844 square feet.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).*



The Board finds, based upon MNCPPC technical staff's findings, that no such excessive concentration will occur.

- (3) There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.*

The property is served by adequate public facilities.

- (4) Adequate parking shall be provided. There must be a minimum 2 off-street parking spaces, unless the Board makes either of the following findings:*

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

*Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.*

The Board finds that on-street parking is adequate to approve the accessory apartment with one off-street space. Staff observed and photographs submitted into the record illustrate that sufficient on-street spaces are available.

- (5) Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.*

Because of its low visual and operational impacts, the Board finds that the accessory apartment will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

Therefore, based upon the foregoing, the Board grants the special exception, subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record, including, but not limited to Exhibits 3, and 5, to the extent that such evidence and representations are identified in the Board's opinion granting the special exception.

2. Petitioner shall make the corrections noted in the inspection report from DHCA.

3. Pursuant to the provisions of the Montgomery County Housing Code, and based upon its proposed dimensions of 503 square feet, the accessory apartment will be suitable for occupancy by no more than two individuals.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 12<sup>th</sup> day of September, 2003.

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Katherine Freeman  
Executive Secretary to the Board

Note:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.